Filed 5/2/19 In re Alize R. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ALIZE R., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. ALIZE R., Defendant and Appellant.	G055682 (Super. Ct. No. 16DL2192) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Bradley S. Erdosi, Judge. Affirmed.

Esther K. Hong, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Meredith S. White, Deputy Attorneys General, for Plaintiff and Respondent.

This appeal presents but one issue: Is there sufficient evidence in the record to support the juvenile court's determination appellant made a criminal threat to a teacher at her high school? Although the issue is a close one, we believe the court's decision passes muster under the deferential standard of review applicable to sufficiency-of-the-evidence claims. We therefore affirm the judgment.

FACTS

On October 3, 2016, appellant was a student at Santa Ana High School, where Tammra Detviler taught special education. That day, Detviler heard appellant cursing outside her classroom. To show her disapproval of appellant's language, Detviler stepped into the hallway and told her, "I am standing right here." Appellant was not deterred. She told Detviler, "Mind your own fucking business."

Nothing more came of the incident, which was the first time appellant and Detviler had ever interacted. But three days later, on October 6, the two met again.

Detviler stepped out of her classroom between periods and overheard appellant talking to some boys in the hallway. Appellant told the boys she was going to "shank" three different people, whom she identified by their nicknames. No one in the group smiled, laughed or said anything in response to the remark. Instead, the boys just went off to their classroom, and appellant began to walk away. However, after taking a few steps, appellant stopped and turned around. Looking straight at Detviler, she told her, "And don't think I won't shank you too."

At the time, appellant and Detviler were standing about 25 feet apart, and there was no one else in the hallway. Appellant did not have anything in her hands, nor did she make any movements or gestures toward Detviler. After making the shanking threat, appellant simply turned back around and walked off in the opposite direction.

Nevertheless, Detviler was scared. She thought appellant might try to stab her. She returned to her classroom, closed the door – which locked automatically – and submitted an electronic referral detailing the incident to the school's disciplinary office.

Later on, Detviler also spoke to Rosa Alatorre, who worked with the school's at-risk students, including appellant. Detviler told Alatorre she was frightened by what appellant had said to her, but it appeared to Alatorre that Detviler was more angry than scared.

Alatorre subsequently talked to appellant about the incident, as did another teacher, Stephen Gorgone. Appellant told Alatorre she never threatened Detviler. But when Gorgone advised appellant it was not a good idea to threaten teachers, she motioned toward the front office and said, "What are they going to do about it."

In the wake of the incident, Detviler made it a point to walk to her car with other teachers because she was afraid appellant might attack her. However, she did not miss any school days or contact the school's security officer for help. Nor did she ever receive a reply to the electronic referral she submitted. Her numerous attempts to meet with the vice principal about the matter were all unsuccessful.

Therefore, Detviler turned to the police and made a criminal complaint against appellant. That prompted the school to commence an investigation into the matter. As part of the investigation, appellant underwent a threat assessment with a psychologist, but she was not suspended or subjected to any disciplinary action by the school. She was, however, charged in juvenile court with making a criminal threat against Detviler.

At trial, appellant took the stand in her own defense. She admitted saying, "Ima shank you" to her friends in the hallway on the day in question. However, she claimed she was only horsing around and never threatened Detviler. The defense also called Alatorre, who testified it is not uncommon to hear students cursing in the hallways of Santa Ana High School. Alatorre said students often talk about shanking and attacking each other. While such statements are usually meant as a joke, Alatorre admitted that is not always the case.

Having "listened to the testimony very carefully," the juvenile court adopted Detviler's version of events and her descriptions of the fear she felt. While

admitting the evidence was not overwhelming, the court found the allegation against appellant true and placed her on probation.

DISCUSSION

Appellant contends there is insufficient evidence to support the juvenile court's finding she made a criminal threat to Detviler. We disagree.

The standard of review for assessing the sufficiency of the evidence to support a criminal conviction is "highly deferential." (*People v. Lochtefeld* (2000) 77 Cal.App.4th 533, 538.) Our task is to review the record in the light most favorable to the judgment to determine whether it discloses substantial evidence of the defendant's guilt. (*People v. Alexander* (2010) 49 Cal.4th 846, 917.) In so doing, we do not reweigh the evidence or reevaluate the credibility of the witnesses who testified at trial; rather, "'[w]e presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] . . . "If the circumstances reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding." [Citation.]' . . . [Citation.]" (*Ibid*.) "The conviction shall stand 'unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support [it]."' [Citation.]" (*People v. Cravens* (2012) 53 Cal.4th 500, 508.) The same standard of review applies in cases involving juvenile defendants. (*In re V.V.* (2011) 51 Cal.4th 1020, 1026.) Whether an appeal involves the review of a criminal conviction or a juvenile court finding, the defendant "bears an enormous burden" in challenging the sufficiency of the evidence to support the trier of fact's decision. (*People v. Sanchez* (2003) 113 Cal.App.4th 325, 330.)

The prohibition against making a criminal threat is set forth in Penal Code section 422.[1] That section states: "(a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific

[1] All further statutory references are to the Penal Code.

intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety" is guilty of a crime.

The statute is aimed at "true threats" that are designed to instill fear of serious bodily harm, as opposed to other forms of lively expression that are protected by the First Amendment, such as "political hyperbole," "emotional outbursts" or "'mere angry utterances or ranting soliloquies[.]'" (*People v. Chandler* (2014) 60 Cal.4th 508, 519-520; *People v. Felix* (2001) 92 Cal.App.4th 905, 913; *In re Ryan D.* (2002) 100 Cal.App.4th 854, 861.) However, section 422 does not require the speaker's words to threaten immediate harm; it merely requires them to raise the immediate *prospect* of fulfillment. (*People v. Wilson* (2010) 186 Cal.App.4th 789, 807.)

Relying on *In re Ricky T.* (2001) 87 Cal.App.4th 1132 (*Ricky T.*), appellant contends her threat to shank Detviler did not rise to the level of a true criminal threat within the meaning of section 422. Like appellant's threat, the subject threat in *Ricky T.* arose in the setting of a public high school. The minor there got locked out of his classroom after using the restroom. When his teacher opened the door to let him in, the door accidentally hit him in the head, and he became upset. Besides cursing his teacher, the minor "threatened him, saying, 'I'm going to get you'" and/or "'I'm going to kick your ass.'" (*Id*. at pp. 1135-1136.) The teacher sent the minor to the office, and he was suspended for five days. He was also found to have made a criminal threat under section 422. (*Ibid*.)

On appeal, the *Ricky T.* court explained, "Section 422 demands that the purported threat be examined 'on its face and under the circumstances in which it was made.' The surrounding circumstances must be examined to determine if the threat is

real and genuine, a true threat. [Citations.]" (*Ricky T., supra,* 87 Cal.App.4th at p. 1137.) In so doing, the court found "the remark 'I'm going to get you' [was] ambiguous on its face and no more than a vague threat of retaliation without prospect of execution. [Citation.] [And the minor's] 'kick your ass' and cursing statements were made in response to his accident with the door." (*Id*. at p. 1138.)

The court also noted there was no evidence the minor and his teacher "had any prior history or disagreements, or that either had previously quarreled, or addressed contentious, hostile, or offensive remarks to the other. [Citations.]" (*Ricky T., supra*, 87 Cal.App.4th at p. 1138.) Nor was there any evidence the minor "exhibited a physical show of force, displayed his fists, damaged any property, or attempted to batter [his teacher] or anyone else." (*Ibid*.) These circumstances led the *Ricky T.* court to conclude there was insufficient evidence to support the juvenile court's ruling. While admitting the minor's remarks were "intemperate, rude, and insolent," the court determined they were not criminal because they were merely "an emotional response to an accident" rather than a genuine attempt to instill fear. (*Id*. at pp. 1138, 1141.)

Unlike the threat in *Ricky T.*, appellant's threat to Detviler was not precipitated by any mitigating circumstances. In fact, contrary to the emotionally-laden threat issued in *Ricky T.*, appellant's words were cold, calculated and utterly unprovoked. During her first encounter with Detviler on October 3, she told Detviler to mind her "own fucking business" after Detviler expressed mild disapproval of her foul language. While certainly not criminal, appellant's abrasive response was wildly out of proportion to the circumstances presented. That hostile encounter provided critical context for Detviler's meeting with appellant three days later.

On that occasion, Detviler witnessed appellant tell her friends she was going to shank three people. The threat did not draw any smiles or laughter, and after her friends departed, appellant was alone with Detviler in the hallway. At that point, appellant could have easily walked away, but instead she made a conscious decision to

confront Detviler. Knowing Detviler had heard her earlier shanking statement, appellant told her straight up, "And don't think I won't shank you too."

Appellant's use of a double negative did little to disguise the clear import of her words, which was to let Detviler know she too was on appellant's shanking list. Granted, appellant did not make any physical gestures toward Detviler. However, if she were just joking around or trying to act tough, it is unlikely she would have waited until her friends were gone to issue the threat. While mouthing off to teachers is often seen by disorderly students as a way to get peer approval, that purpose requires an audience. Unlike the attention-seeking behavior of a class clown or an adolescent trash-talker, appellant's words and actions had a somber and menacing undertone that conveyed a gravity of purpose and immediate prospect of execution and had an audience of one.

In arguing otherwise, appellant notes Detviler did not call the police until about 10 days after the incident, and the school did not start investigating the threat until that time. The record does not disclose why the school's investigation was delayed, but it is apparent the delay was not attributable to a lack of urgency on Detviler's part. After appellant threatened her, she immediately retreated to her locked classroom and reported the incident to the school's disciplinary office. She also spoke to other teachers about the matter, made numerous attempts to contact the vice principal, and changed her behavior out of fear for appellant. Her actions do not suggest appellant's threat was something she took lightly. Rather, they indicate just the opposite.

Considering the entire record, we believe there is substantial evidence to support the juvenile court's finding appellant's threat was so unequivocal, immediate and serious as to constitute a true criminal threat. There is nothing in the record to suggest the threat was merely an angry utterance made in a fit of pique, ala *Ricky T.* Under such circumstances, we must defer to the trial judge who saw and heard the witnesses and their description of events.

Appellant also claims there is insufficient evidence to support the fear element of section 422. While appellant does not dispute her threat caused Detviler to be in sustained fear, she claims Detviler's fear was not objectively reasonable. (See *Ricky T., supra*, 87 Cal.App.4th at p. 1140 [the fear element of section 422 "has a subjective and an objective component. A victim must actually be in sustained fear, and the sustained fear must also be reasonable under the circumstances."].) The claim is based on appellant's belief the circumstances surrounding the threat were not particularly harrowing. However, as we have explained, the overall context of the threat indicates it was a serious attempt by appellant to instill fear in Detviler. It is also clear the threat implicated all "three rationales for excluding true threats from the ambit of the First Amendment: protecting people '"'from the fear of violence,"' protecting people '"from the disruption that fear engenders,"' and protecting people '"from the possibility that the threatened violence will occur."' [Citation.]" (*People v. Chandler, supra*, 60 Cal.4th at p. 524.) That being the case, we are loath to overturn the juvenile court's ruling.

We recognize, of course, that not every high school teacher would fear for their safety if an empty-handed student threatened to shank them in a deserted hallway. However, we are not prepared to say Detviler's fear was objectively unreasonable under the circumstances presented. To the contrary, we believe the record contains substantial evidence from which the juvenile court could rationally infer appellant's threat caused Detviler reasonably to be in sustained fear for her safety. And what it doesn't contain, the ability to see and hear Detviler and appellant militates strongly in favor of deference to the trial court.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

GOETHALS, J.